

Central Law Journal

St. Louis, January 5, 1925

WILL THE SENATE ALLOW THE COURTS TO BE SAVED?

As one looks upon Congress, justification is felt in repeating what was said in these columns some years ago. The people of this country in no uncertain manner demand simplification, expedition and economy in the operation of the courts. It is a just demand and the failure to respond will jeopardize the confidence and contentment of the people, if not the very foundation of the Republic. No thoughtful man will deny that a weakening of the courts means a weakening of the government; and a loss of faith in the courts means the destruction of the government. When men desert the courts, nothing is left but force in the protection of property rights and civil liberty.

Open mob violence and secret law enforcing societies are portentous symptoms. Creation of arbitration boards by business men is a sign of the popular mental trend. All these things are warnings that Congress may heed with profit. The people have learned that justice is kept from them because of the failure or refusal of Congress to act. Neither the people nor the courts can stand the strain much longer. It would be an unnecessary sacrifice to do so, when relief is so easily available.

It is hardly conceivable that a person is to be found, and certainly not a lawyer, who would intentionally trifle with such a solemn governmental condition or allow his personal views to block the necessary legislation. He would either permit a vote on the pending measure or supply a better substitute. Yet, there are a few big men in the Senate of the United States, learned in the profession, enjoying the respect of their fellows and their constituents, who are justifying their opposition to the unanimous voice of the great American

Bar Association, forty-six State Bar Associations, all the national, civic and commercial organizations and the deans of the law schools, because their *personal ideas* of the manner in which judicial procedure should be reformed do not conform to that of the thousands of practical, working lawyers and judges who have magnanimously and patriotically sunk all pride of opinion. It is a striking fact that this is the first time in the history of the civilized world that the organized lawyers have agreed upon a program for the reform of the procedure of the courts. It is the result of a noble unselfishness that will mark this era. Ought not that to mean something to these Senators? One cannot but believe that it will. Let us reason together.

Have these statesmen the right to prevent the lawyers and judges from responding to a just demand of the people to "make courts of justice out of courts of law" as was aptly described in one of Woodrow Wilson's pre-election addresses? Is it not a moment when that unselfish patriotism and broad statesmanship which gave us the Constitution should sink the personal equation in the interest of the public good? They are requested to read George Washington's remarks on submitting the Constitution to Congress. We ask them to read Mr. Madison's address before the Virginia Convention in supporting the Federal Constitution that did not meet his personal viewpoint, but was the best available. These were great and historic events, but they will prove no less epochal than bringing justice to the American people in 1924.

Now, has any Senator, or any four Senators, the moral, ethical or official right or duty on personal grounds to throw the weight of their great influence in the way of a vote on the Senate floor for such a needed reform, or to set their official power against the will of the people and a majority of the Senate, and the unselfish effort of their lawyers and judges? Is that just the way they fight their other battles? Their records sufficiently supply a negative

answer. Does duty demand more of them than a vote against the measure, if like Mr. Madison, they cannot accept it as the best to be had under the circumstances?

But, even above and beyond these considerations there is yet another.

If as measured by their personal views, statesmen believe they observe error in the unanimous opinion of the American Bar Association, that of forty-six State Bar Associations and that of the deans of the law schools of this country, and all the law journals we venture the corollary that there devolves upon them forthwith the sacred duty of proposing a better plan of their own. Is that not in fact the test? Should they do so the lawyers and the judges, in the interest of the general welfare, will gratefully and promptly come to these few Senators, although these few Senators will not come to them. The lawyers and judges sensing the danger in delay, have sunk all pride of opinion and have left the creation of the proposed rules of court in other hands, subject only to their recommendation.

It can now be stated as a verity that the bill for simplifying the procedure of the federal courts (S-2061) by vesting in the United States Supreme Court the same power to make rules for the law side that it has always possessed on the equity side of the courts, will be enacted into law at the present short session if no obstruction be put in the way of a vote. The Judiciary Committee has recommended it; a large majority of Senators have been encouraging enough to assure their vote.

May the statesmen of this generation embrace the spirit of the noble George Washington in submitting the Constitution to Congress September 17, 1787 (1 Annals of Cong., p. VII): "The Constitution which we now present is the result of a spirit of amity and of that mutual deference and concession, which the peculiarity of our political situation rendered indispensable. That it will meet the full and entire approbation of every State is not, perhaps, to be expected."

THOMAS W. SHELTON.

LIABILITY OF BANK FOR LOSS OF SPECIAL DEPOSIT

The general rule is that a mandatory is bound to use a degree of diligence and attention adequate to the performance of the undertaking. The degree of care required is essentially dependent upon the circumstances of the case. It is materially affected by the nature and value of the goods and their liability to loss or injury. That care or diligence which would be sufficient as to goods of small value or of slight temptation might be wholly unfit for goods of great value, and very liable to loss and injury.

The above is laid down in the case of *Pennington v. Farmers' and Merchants' Bank* (231 S. W. 545, 17 A. L. R. 1213), decided by the Supreme Court of Tennessee. In this case the plaintiff brought suit to recover the value of a \$1,000.00 Victory Bond, which had been given to the bank for safekeeping, and was lost when the bank's vault was burglarized. Plaintiff's father had a tin box which the bank had presented to him, and in which his valuable papers were kept. The bank undertook the care of the box without charge. Plaintiff's father had not rented any space or receptacle in the bank's vault, and the bank was free to keep the box where it thought proper. Plaintiff's bond was placed in this box, and so entrusted to the bank. Plaintiff had a savings account at the bank. At the solicitation of the bank president, plaintiff had caused her father to purchase the bond from the bank. It further appeared that upon the suggestion of the president of the bank the bond was put in her father's box by the bank official himself, and the box carried back by the latter into the vault. The testimony also tended to show that the bank was robbed at night; that there was no night policeman in the town where the bank was located, and that the bank had no burglar alarm or night watchman, and did not burn lights in its building at night; that the tin box was placed in the vault along with other light boxes belonging to cus-

tomers; that the vault was an old one, built of brick without steel lining; that it had an iron or steel door; that in the vault was a nest of safety deposit boxes and two safes; that neither the safety deposit boxes nor the safes were disturbed by the burglars, and only the tin boxes were rifled; that one of the safes was burglar proof, and that in this safe the bank kept its money and its own bonds and bonds belonging to relatives of some of its officers; that there was no room in this safe to put tin boxes, but plenty of room to place plaintiff's bond and the bonds belonging to the bank's patrons. It was held that the testimony was sufficient to take the plaintiff's case to the jury, and that a directed verdict in favor of the defendant was error.

In the case of *Miller v. Bank of Holly Springs* (131 Miss. 55, 95 So. 129), it appeared that a customer of the bank had deposited with the bank some war savings stamps, which were kept in the bank's vault instead of in its safe, where its money was kept. The customer, noticing in the public press that many banks in the country were being burglarized, told the bank that he had decided to move the stamps to another bank for safekeeping, because he was afraid to have the stamps remain in its vault. The bank then agreed that if he would permit his stamps to remain with it, they would be placed in its safe where its money was kept, which was burglar proof. The customer accepted this proposition, but the bank failed to do as it had agreed, and the bank was burglarized and the stamps stolen, while the bank's safe was not molested. It was held that this agreement was special, and not a general contract of bailment, and was based on a sufficient consideration, and therefore the bank was held liable for the loss.

In *West v. First State Bank* (Minn., 197 N. W. 850), it was held that a depositor of war savings stamps with the bank for safekeeping as a gratuitous bailee, established a prima facie case by showing the bailment and the bank's failure to return the

stamps. In this case the defendant's evidence was so contradictory and inconclusive as to leave clear room for an honest difference of opinion as to the question of care exercised by the bank. The court stated that if the evidence had led irresistibly to the conclusion that the stamps had been taken by burglars, the bank would have been exonerated.

The court, in *Kubli v. First National Bank* (193 Ia. 833, 186 N. W. 421), assuming that the defendant bank held the plaintiff's liberty bonds under circumstances creating a gratuitous bailment, applied the rule that in such a case the defendant's liability for loss thereof is dependent upon its failure to exercise that care which business men of prudence would exercise in keeping property of like value in like circumstances, or the care that it would use in the reasonable protection of its own property of like character, and held that the question of liability, the bonds having been stolen when the bank's vault was burglarized, was one of fact for the jury, it appearing that the defendant held itself out as a depository and solicited the deposit of bonds for safekeeping, and that it kept the stolen bonds in a vault having a comparatively flimsy brick wall, while it kept its own money and bonds in a steel chest, which the burglars did not succeed in opening.

In the case of *Thornton v. Athens National Bank* (Tex. Civ. App., 252 S. W. 278), the court held that, where there was a deposit of bonds with a bank, and a receipt was issued therefor stating that the bonds were deposited for safekeeping and were to be returned upon return of the receipt, there was no consideration moving to the bank for receiving the bonds as a special deposit, so that the bailment was gratuitous, and that in such case the bailee was liable only for gross negligence in the manner of keeping the bonds, or, in other words, the bailee was responsible only for good faith and ordinary diligence.

In *Harland v. Pe Ell State Bank* (122 Wash. 289, 210 Pac. 681), it was held that

a bank, acting as gratuitous bailee in keeping liberty bonds and war savings stamps of a customer, was exonerated from liability by showing that the bonds and stamps were kept in a safe, which was the safest place in the bank, in the same compartment where it kept its own bonds and securities other than cash. It was held that the bank exercised reasonable care, hence was not liable for loss of the bonds and the stamps when the bank was burglarized.

NOTES OF IMPORTANT DECISIONS.

NOT UNPROFESSIONAL FOR ATTORNEY TO SOLICIT CLAIMS.—The Supreme Court of Illinois, in the case of *People ex. rel. Chicago Bar Association v. Edelson*, 145 N. E. 246, holds that it is not unprofessional for an attorney interested by reason of his employment to collect claims for a client, to solicit claims for the purpose of having creditors sufficient in number and amount to authorize the filing of a petition in bankruptcy, provided good faith was exercised and his intention was not merely to secure fees. The following quotations from the case shows the view of the court in this respect:

"The solicitation of business by personal communications not warranted by personal relations is unprofessional, and so is the volunteering of advice to engage in litigation. The Bankruptcy Act requires, as a condition to filing an involuntary petition in bankruptcy, that three creditors whose total claims aggregate \$500 must join in the petition. It is unprofessional for an attorney having no interest to advise the filing of a petition in bankruptcy or to solicit claims for that purpose, but it is not necessarily unprofessional for an attorney, interested by reason of his employment to collect a claim for a client, to solicit a claim for the purpose of having creditors sufficient in number and in amount to authorize the filing of a petition in bankruptcy. An attorney having a claim which it is his duty to collect should not be debarred from soliciting other claims, in order to procure creditors sufficient in number and in amount to authorize the filing of a petition in bankruptcy, on the ground that such solicitation is unprofessional. To do so might deprive him of the only available means

of collecting the claim which he has. The motive of the solicitation was important in determining the propriety of the action. If it was to begin litigation in order to enable the respondents to secure fees for themselves the action was unprofessional and dishonorable; if it was to secure their clients' claims it was not unprofessional or dishonorable. If they believed in good faith that they were authorized to represent the petitioners in bankruptcy, and their action was taken to secure the latter's claims, such action was not unprofessional.

"The reputation of the respondents is to be taken into consideration, as well as the practice observed by the profession generally in the matter involved. The respondents were not bound to distrust their clerk, and undertake an independent investigation of the authority which he represented himself to have, in the absence of any reason to suspect him of some impropriety. Their response to the notice from the committee of the Bar Association, promising to observe the requirements of the canons, and their subsequent faithful observance of them, together with their prompt adjustment of the civil liability arising out of the wrongful act of their employee, must also be taken into consideration, and their conduct as shown by this record does not indicate a lack of the honesty, good moral character, or professional standards which requires the forfeiture of their licenses to practice law."

EFFECT OF NON-COMPLIANCE WITH AUTOMOBILE REGISTRATION LAW ON POLICY OF INSURANCE.—In the case of *Ohio Farmers' Insurance Company v. Todino*, decided by the Supreme Court of Ohio, 145 N. E. 25, it appeared that one Todino, husband of the plaintiff, on April 29, 1921, procured of the Ohio Farmers' Insurance Company, the defendant, a fire and theft policy covering his automobile; that on October 27, 1921, Todino visited the agent of the company and stated that he wanted the policy "corrected" by having it run in favor of his wife; that pursuant to such direction the agent of the company made an endorsement, substituting the plaintiff instead of her husband as the insured. It appeared that on October 27, 1921, Todino gave the car to the plaintiff; that the car was stolen within a day or two thereafter, and proofs of loss were made to the company, which rejected the claim. The company refused the claim and defended against the action on the ground that no bill of sale was executed by Todino to the plaintiff in accordance with the requirements of a statute, and

that the policy contained a provision exempting the company from liability in the event the insured was not the sole and unconditional owner of the property covered by the policy. At the trial it was conceded or fully proven that no bill of sale was executed. The statute in question provides that in all gifts in which title passes to a used motor vehicle the person making the gift shall execute a bill of sale in duplicate, and deliver same to the donee at or before the passage of title; that such bill of sale shall be duly verified before a notary public or other person authorized to administer oaths; that any such bill of sale not verified before delivery shall be null and void, and of no effect in law; that each person so receiving a used motor vehicle shall obtain from the person conveying, at or before the transfer or delivery, such bill of sale in duplicate, and, that the person receiving the bill of sale shall, within three days, file one of the duplicate copies with the clerk of courts of the county, who shall affix his official seal to such instrument. Other sections of the Act provide penalties for failure to observe the several requirements.

In holding that the plaintiff was not the sole and unconditional owner of the automobile covered by the policy, and that on that account she could not recover under the policy, the court in part said:

"The authorities are plentiful that courts always look to the language of a statute, its subject matter, and the wrong or evil it seeks to remedy or prevent, or, in other words, the purpose sought to be accomplished by its enactment, to determine whether a transaction governed by such statute is void if the statutory requirements be not followed, or whether (there being no direct provision making such transaction void) the penalty provided by the statute for the failure to observe it is all that is to be exacted.

"A distinction has been recognized between statutes designed for the protection of the public and those designed primarily for the raising of revenue. The courts are in accord that where a statute is enacted to protect the public against fraud or imposition, or to safeguard the public health or morals, a contract in violation thereof is void, even though a money penalty also is exacted.

"The statute under consideration is not a revenue raising measure. No fees of any consequence are paid or are payable. It was not designed to prevent the sale of automobiles. Its sole purpose was to prevent, in so far as possible, the stealing of automobiles, which, because of the opportunity to commit the

crime and escape detection, unfortunately had become, and is still, so prevalent as to be classifiable as a near industry. The declaration of the General Assembly which passed the act is that its purpose was and is to prevent traffic in stolen cars.

"In view of the requirement of the statute that a bill of sale shall be verified before it can have force and effect, how can it be successfully argued that no bill at all may have force and effect? Omission of action is not action. Non-performance is not performance. Failure to do a thing is not the doing of it. The absence of a paper is not the equivalent of a paper. As title cannot pass without a verified bill of sale, and in this transaction no bill of any kind or character was executed by the donor or filed by the donee (plaintiff), how can it be claimed that at the time of the theft plaintiff was the sole and unconditional owner of the car, within the meaning of the policy?"

EXPANSION OF CRIMINAL EQUITY BY INJUNCTION*

By HENRY W. BALLANTINE

In the effort to find more drastic remedies public prosecutors are falling back more and more on injunctions to reinforce the criminal law, and star chamber methods of procedure. In case of public nuisances a criminal prosecution is the legal remedy, which will not only punish the offender, but also abate the nuisance. Injunctions, however, may be granted at the suit of the state to restrain their creation or continuance.¹ Since the conception of a public nuisance is exceedingly vague and elastic,² it is entirely possible either for the legislature or for courts of equity to expand it so as to assume jurisdiction over the punishment of crime, and create a handy detour around constitutional provisions which guarantee the right of trial by jury in criminal cases.

Public and social interests ought, of course, to receive as full recognition and protection from the law as private prop-

*Also printed in 13 California Law Review, 63.

(1) *People v. Gold Run Ditch Mining Co.* (1884), 66 Cal. 138, 155, 4 Pac. 1152.

(2) See Cal. Civ. Code, §§ 3479, 3480; Cal. Pen. Code, § 370; *Mugler v. Kansas* (1887), 123 U. S. 623, 31 L. Ed. 205, 8 Sup. Ct. Rep. 273.

erty rights, when exposed to danger or mischief from injuries analogous to torts. The state may go into equity not only as a property owner, but also as representative or guardian of the health and wealth and general interests of its citizens.³ This is well illustrated in *People v. Stafford*,⁴ which was a suit for an injunction by the State of California against a corporation engaged in the business of packing fish. It was contended that the State could not sue in equity to obtain an injunction to prevent the violation of a police regulation except where the act sought to be abated or prevented is a public nuisance which affects the health, morals or safety of the people. The statute makes it unlawful to use any food fish for fertilizer or reduction purposes except within the limits of a permit granted by the Board of Fish and Game Commissioners.⁵ It was held that the State might enjoin violation of this law by a packing company using more fish in its reduction plant than authorized by its permit, on the ground that the use of such fish is an invasion of property rights which are held by the State in trust for the people. A criminal prosecution of the defendant on a misdemeanor charge for violating the terms of its permit would not be an adequate remedy for the unlawful destruction of the fish at the rate of millions per month. This decision seems undoubtedly correct, although it was hardly necessary to base it upon the wrongful invasion of property rights in the fish, which are *ferae naturae* and open to acquisition by any one. It would seem sufficient to recognize a public and social interest in their preservation for the benefit of the people, as a source of food supply, which is not strictly a property right, either in the State or in the people at large.⁶

The extension of criminal equity and

(3) 5 Pomeroy's Equity Jurisprudence (4th ed.), p. 4296, § 1893; *In re Debe* (1894), 158 U. S. 554, 39 L. Ed. 1092, 15 Sup. Ct. Rep. 900; Z. Chaffee, Jr., *Cases on Equitable Relief Against Torts*, p. 438-479.

(4) (June 5, 1924), Cal. Dec. 517, 227 Pac. 455.

(5) Cal. Stats. 1919, p. 1204; Cal. Stats. 1921, p. 459.

(6) *Missouri v. Holland* (1919), 252 U. S. 416, 64 L. Ed. 641, 40 Sup. Ct. Rep. 352.

the power of abatement and punishment by process of contempt have been carried to a striking extent in recent years both by state and also by federal statutes. The legislatures have found it convenient to enlarge the category of public nuisances so as to authorize injunction proceedings at the suit of the State against the use of premises for prostitution and immoral purposes, or as places where liquors are sold contrary to law. In over thirty-eight States Red Light Abatement Acts authorizing injunctions against disorderly houses have been enacted.⁷ Under Section 22 of the Volstead Act a place where the Act is violated by the manufacture, sale, etc., of intoxicating liquor, is declared a common nuisance, and a suit in equity may be maintained for its abatement and the place may be ordered closed for a year.⁸ In a New Jersey case, however, it was held that the legislature cannot confer upon equity courts power to abate violations of criminal laws such as bawdy houses or illegal saloons as public nuisances, as this is an evasion of constitutional restrictions as to jurisdiction of courts and the right to jury trial and might result in the legislature confiding the entire criminal code to courts of equity for enforcement.⁹

The extension of injunction procedure by statute to disorderly houses and illegal saloons is upheld, except in New Jersey, as within legislative power. But it is another question how far a court may go without statutory aid, and by the simple device of calling any offense, such as bawdy houses, gambling houses, saloons, bull fights or prize fights, which in any way threatens property, a public nuisance or "analogous to a public nuisance," authorize itself to

(7) *Columbia Law Review*, 605; 34 *Harvard Law Review*, 399; see also *Selowsky v. Superior Ct.* (1919), 180 Cal. 404, 181 Pac. 652; *People v. Peterson* (1920), 45 Cal. App. 457, 187 Pac. 1079; *People v. Barbieri* (1917), 33 Cal. App. 770, 166 Pac. 812; *People v. Casa* (1917), 35 Cal. App. 194, 169 Pac. 454; *Chase v. Props. Revere House* (1919), 232 Mass. 88, 122 N. E. 162.

(8) See on *Padlock Injunctions*, 72 *University of Pennsylvania Law Review*, 283, 289; 71 *Id.*, 91; 8 *Cornell Law Quarterly*, 371; 8 *Illinois Law Review*, 29; 19 *Illinois Law Review*, 71.

(9) *Hedden v. Hand* (1919), 90 N. J. Eq. 583, 107 Atl. 285, *Am. Law Rep.* 1463; see also 22 *Am. Law Rep.* 542; 34 *Harvard Law Review*, 399, 401; 9 *Political Science Review*, 93.

issue an injunction and throw into jail any person whom it finds to have violated the law without trial by jury. An extreme exercise of the power of summary punishment of crime was upheld by the California Supreme Court under the Criminal Syndicalism Act in the habeas corpus case of *In re Wood*.¹⁰ A sweeping temporary injunction was issued by the Superior Court of Sacramento County at the suit of the State on the relation of the Attorney-General against the Industrial Workers of the World and various parties known and unknown, ordering them to refrain from conspiring to injure or damage property in the State, or to circulate books and pamphlets teaching criminal syndicalism, sabotage or the destruction of property for the purpose of taking over industry, or from organizing or aiding to organize or increase any society or association of persons which advocates criminal syndicalism. Wood was arrested for violation of this injunction, charged with being a member of the I. W. W. and with having knowingly violated the injunction. The only definite charge was that of procuring new members for the I. W. W. The court imposed a fine upon him for contempt of court and he was imprisoned for non-payment. He sought release from custody by habeas corpus particularly on the ground that the acts forbidden by the terms of the injunction were the precise acts which are denounced as a felony by the provisions of the Criminal Syndicalism Act,¹¹ and that the sole purpose and effect of the injunction were to take away from one charged with the commission of these particular crimes his right to a trial by jury. It was held, however, that on the analogy of a public nuisance, where the property rights of many citizens are threatened by criminal acts, it is proper for the government on their behalf to invoke the powers of equity.¹² It was declared by the court

(10) (June 20, 1924), 67 Cal. Dec. 596, 227 Pac. 908.

(11) Cal. Stats. 1919, ch. 188; *People v. Steelik* (1921), 187 Cal. 361, 208 Pac. 78.

(12) Citing 5 Pomeroy's Equity Jurisprudence (4th ed.), § 1894.

that the mere arrest and punishment of the petitioner would not afford adequate protection to the property of citizens from threatened injury and destruction for the reason that the remaining members of the conspiracy would be left at large to carry on its criminal activities, together with the twenty-four new members who had been procured by petitioner in contemptuous violation of the injunction.

The argument of the court to the effect that the legal remedy by criminal prosecution would be inadequate seems singularly fallacious and unconvincing. Suppose that it is true that many hundreds of thousands of dollars worth of property have been burned at different points in Northern California through the activities of the I. W. W. and that the arrest of one of the criminals would not be an adequate remedy against the crimes of the others. Does this show that the criminal prosecution of the other offenders would not be as adequate a remedy against them as a suit for an injunction?

As was pointed out by the petitioner, the act itself is of an injunctive character in that under it persons may be punished for advocating sabotage and for organizing or engaging in a conspiracy to commit crimes in advance of the commission of any overt act.

The issuance of the injunction adds nothing to the prohibition of the statute. An injunction has no mysterious potency physically to prevent violation of the law, although courts often talk as if it had. The purpose simply is to call into operation the process of courts of equity in punishing for contempt. The remedies of law and equity are here the same except for jury trial. Injunctions are effective only because they sanction a method of summary punishment without a jury. Whatever will justify punishment for contempt will equally justify arrest and punishment for the criminal act which constitutes the contempt.

The court primarily relies in its decision upon the cases giving injunctions against

strikes, particularly the case of *State v. Howat*,¹³ in which it was held that the State of Kansas was entitled to an injunction against a coal strike, which if called would inflict on the public irreparable injury, irrespective of the state's ownership of the property affected, and without the aid of a statute. There are few other instances where a state has sued to enjoin a strike, although a number of injunctions have been granted at the suit of the United States against strikers who were interfering by violence with interstate commerce and the movement of the mail over the railroads.¹⁴

Injunctions are theoretically extraordinary remedies granted with great caution and in the exercise of sound judicial discretion in cases of urgent necessity where adequate and complete relief cannot be obtained at law. The Star Chamber, a committee of the Privy Council, was a Court of Criminal Equity. But since the abolition of the court of Star Chamber in 1641 it has been recognized that courts of equity have in general no criminal jurisdiction.¹⁵ It is not in accordance with the intent and spirit of the Constitution that persons should be punished for violating general laws by a court acting without a jury under a sweeping edict or injunction issued against all persons who may violate the terms of a criminal statute. Such injunctions are merely cumulative prohibitions. It would seem to be a great mistake, even if not unconstitutional, to allow prosecuting officials to employ courts of equity as criminal courts. As has been well said "courts of equity cannot with propriety or safety extend their jurisdiction, under the guise of protecting property, by issuing decrees imposing merely cumulative prohibitions against that which

the criminal law already forbids, in order summarily to try and punish offenders for acts in violation of those prohibitions."¹⁶

It has been pointed out by Mr. E. E. Witte in an article on the Value of Injunctions in Labor Disputes, that contrary to popular belief the practical effectiveness of such injunctions has been greatly overestimated.¹⁷ They are not as valuable to employers as is usually assumed. Injunctions do not operate to increase the police protection enjoyed by employers. It is only through arrest and punishment for contempt after violations have occurred that injunctions can be enforced. There is no necessity for enjoining a threatened murder; the penalty and police protection afforded by the law are just as preventive as any injunction.¹⁸ "The most drastic, severe and permanent of all injunctions against violence is the penal law."

The Legislature in the Penal Code¹⁹ has declared that every person guilty of willful disobedience of any process or order lawfully issued by any court is guilty of a misdemeanor. The same act may thus by injunction be made trebly punishable, (1) as a criminal offense, like criminal syndicalism; (2) as a contempt of court; and (3) as a criminal disobedience of the order of the court. In the case of *In re Morris*²⁰ it is held that the remedies provided in Section 166 of the Penal Code for disobedience of an injunction are cumulative and do not deprive the court issuing the injunction of power to punish for contempt. The petitioner was charged with the willful disobedience of the injunction issued by the Superior Court of Sacramento County in the suit of *People v. The I. W. W.* He contested the validity of the injunction and the constitutionality of the above section of the Penal Code. The Supreme Court held that the court

(13) (1921), 109 Kan. 376, 198 Pac. 686, 25 Am. Law Rep. 1210; see also *State v. I. W. W.* (1923), 113 Kan. 347, 214 Pac. 617; *State v. Wallace* (1921), 114 Wash. 692, 195 Pac. 1049.

(14) *In re Debs*, supra, n. 3; *U. S. v. Railway Employees' Dept. of A. F. of L.* (1923), 283 Fed. 479, 290 Fed. 978.

(15) See *Heber v. Portland Gold Mining Co.* (1918), 64 Colo. 352, 172 Pac. 12, L. R. A. 1918D 681; *People v. District Court* (1899), 26 Colo. 386, 58 Pac. 604; *Daniels v. Portland Gold Mining Co.* (1912), 202 Fed. 637, 45 L. R. A. (N. S.), 827; Cal. Civ. Code, § 3369.

(16) W. H. Dunbar, *Government by Injunction*, 13 Law Quarterly Review, 347, 353, 361; see also 11 Harvard Law Review, 457; 5 Cornell Law Quarterly, 184, 424.

(17) 32 Journal of Political Economy, 335, June, 1924.

(18) *Moir v. Moir* (1918), 183 Iowa, 370, 165 N. W. 1001.

(19) Cal. Pen. Code, § 166, subd. 4.

(20) (June 20, 1934), 67 Cal. Dec. 596, 227 Pac. 814.

has power to punish for contempt and the State also has power to punish the contempt as a specific criminal offense. Each remedy is for a different offense, although the two offenses arise out of the same act. The defense of once in jeopardy would not apply in such a case because the two offenses are distinct and different, even though the act out of which they arise is the same. It is, however, recognized by the Penal Code, Section 658, that there is some danger of double punishment, because it is provided that when it appears that a person has already paid a fine or suffered an imprisonment for a criminal act under an order adjudging it a contempt, the court may in its discretion mitigate the punishment to be imposed.

An important limitation on federal "government by injunction" is upheld in a decision just handed down by the United States Supreme Court.²¹ The Constitution does not forbid trial by jury for criminal contempt. The provisions of the Clayton Act (October 15, 1914, 38 Stat. 730) called "Labor's Magna Charta," granting a right of trial by jury in cases between employers and employees upon demand of the accused when a party is charged with contempt of court for an act of such a character as to constitute also a crime, are held constitutional. The statute does not deal with contempts in the presence of the court or which obstruct the administration of justice. It applies to acts in violation of a decree which are also a criminal offense under any statute of the United States or law of any State in which the act is committed. It is held that this statute does not encroach upon equity jurisdiction or the "inherent powers" of the federal courts. The proceeding for criminal contempt is an independent proceeding at law. The purpose is to vindicate the authority of the court and punish an act of disobedience as a public wrong. In such cases the presumption of innocence, the privi-

(21) *Michaelson v. U. S.*, 45 Sup. Ct. 18, 57 Chicago Legal News, 114, reversing 291 Fed. 940; contra, *Walton Lunch Co. v. Kearney* (1920), 236 Mass. 310, 128 N. E. 429; but see 36 Harvard Law Review, 1012; 37 Harvard Law Review, 1010.

lege against self-incrimination, and the rule that proof of guilt must be beyond a reasonable doubt would apply in the jury trial for contempt as they do in a criminal prosecution. It is now a question for State legislatures to decide whether the right to a jury trial ought to be granted where the contempt charged is also a specific criminal offense, and where under the guise of trials for contempt of court persons are being prosecuted for what in substance are simply violations of the criminal law.

IN RE PROPOSAL TO TRANSFER THE PROHIBITION ENFORCE- MENT UNIT TO THE DEPART- MENT OF JUSTICE*

By WAYNE B. WHEELER

The proposal made by some of the United States senior Circuit Judges to transfer the Prohibition Enforcement Unit from the Treasury Department to the Department of Justice is not new. A bill for this purpose (H. R. 8112) was introduced in the 68th Congress by John Philip Hill, of Maryland. It was also considered by the reorganization Committee of both Houses. The committee refused to make any recommendation or introduce any bill for such transfer even though an assistant attorney-general recommended it. The assistant attorney-general who has charge of prohibition enforcement has always opposed the transfer of this department to the Justice Department because it is not in accord with the long established policy of government to make the prosecuting department the evidence-gathering department. Practically every public official who has direct administration of the prohibition enforcement law has taken the position that a transfer of the department as proposed would not increase efficiency.

The Eighteenth Amendment prohibits the manufacture and sale of intoxicating liquors for beverage purposes. The manufacture and sale of such liquor for non-

*The recommendations of the Conference of Judges are printed in this issue.

beverage purposes is still permitted under government control. All forms of intoxicating liquors may be diverted to beverage use. At the present time since smuggling is being better suppressed, the principal sources of supply of illicit liquor is the diversion of industrial alcohol to beverage uses. The control over the manufacture and withdrawal of such liquors under the National Prohibition Act is provided in the permit system. The control over these withdrawals is a function which has always been exercised by the Treasury Department. The making of analyses, the passing upon formulas for the manufacture of alcoholic preparations, the control over distilleries, bonded warehouses and alcohol plants are all unrelated to the activities of the Justice Department. Alcohol and intoxicating liquors are still subject to taxation. The Treasury Department has to maintain supervision over intoxicating liquors in order to collect the taxes thereon. This function, it is generally admitted, must be retained in the Treasury Department. The taxes collected by this department now approximate twenty-eight million dollars annually.

Prosecutions involving violations of the liquor laws may be brought in many instances either under the Internal Revenue laws or the National Prohibition Act. The Treasury Department, while supervising the manufacture and sale of liquor to collect the tax, can, with less expense at the same time, enforce the prohibition of the manufacture and sale of such liquors for beverage use. It is necessary for the Treasury Department to maintain a large force of agents to investigate applicants for permits and to supervise the enforcement of the Internal Revenue laws at industrial alcohol plants and distilleries. To transfer the permit system to the Department of Justice would result in a duplication of machinery since the Justice Department would have to maintain a force to prevent the diversion of liquors for permitted uses to illegal purposes and the Treasury Department a force to collect the

taxes due the government. This would add to the cost of enforcement; would confer upon the Department of Justice control over a subject matter foreign to its nature, and would be burdensome to legitimate business because business men would have to submit to the regulation and supervision by two departments instead of one, with all the conflicting rulings which would result from a dual administration.

On the other hand, to leave the control over the manufacture and withdrawal of liquors through the permit system in the hands of the Treasury Department and to transfer to the Department of Justice simply the duty of investigating and detecting violations and the prosecutions of cases would result in divided responsibility and increased laxity of enforcement. Effective prohibition enforcement requires that the same department shall have control over the manufacture and sale of intoxicating liquors for permitted uses and also of the duty of detecting violations of the law. Otherwise, wherever there is a breakdown in law enforcement, the department charged with detecting violations alleges the fault to be that of the department controlling withdrawals in permitting too large quantities to be withdrawn which are diverted to beverage use, while that department, seeking to shift responsibility, alleges the fault to be that of the department charged with detecting violations. Efficient enforcement of prohibition requires the close co-operation of the Coast Guard, customs service, the Income Tax Division and other officers of the Treasury Department, whose duties cannot be transferred to the Justice Department.

The present difficulty in law enforcement grows out of insufficient co-ordination of activities within the Treasury Department under the present law. A further separation of these functions between the Department of Justice and the Treasury Department would result in a worse division of responsibility.

The logical remedy for this situation is

provided in the Cramton bill, which was passed by the House at the last session of Congress and is now pending in the Senate. This measure provides for the creation of a Bureau of Prohibition Enforcement within the Treasury Department to be administered by a commissioner of prohibition under the supervision of the Secretary of the Treasury. It charges the commissioner with the duty of enforcing the prohibitory provisions of the law and also with supervision over the control of the withdrawal of liquor for non-beverage purposes under the permit system, to be administered by a Division of Industrial Alcohol and Chemistry within the Bureau.

Under such a plan, wherever there is defective enforcement, responsibility for the condition can be placed. This will co-ordinate within the Treasury Department under the Secretary of the Treasury, the various branches of the government which have to deal with the different provisions of law relating to the liquor traffic and will establish close co-ordination between the customs service and the Coast Guard charged with suppression of smuggling, the administration of the Internal Revenue laws for the collection of taxes on distilled spirits and liquor, and the enforcement of the prohibitions of the Eighteenth Amendment. The agents of this department will be required to make the investigations and report cases of violation to the United States district attorneys who are charged with prosecuting them under the direction of the Attorney-General. This will provide for the enforcement of the prohibition law in the same manner as other laws.

The Attorney-General has always been the chief legal advisor of the President and is charged with the prosecution of cases on behalf of the government. This department has never been primarily an evidence-gathering department. The system which obtains is for the department charged with the supervision of a particular law to gather the evidence and present it to the United States district attorneys

for the prosecution of the offender. This practice has been followed for many years. Illustrations are found in the enforcement of the postal laws, the customs laws, the Internal Revenue laws, the Pure Food and Drug Act, the Narcotic laws, etc. There is no reason why an exception should be made in the case of one penal statute. At the present time the United States district attorneys have control over the presentation of the prohibition cases in the federal courts as in other cases. If so-called trivial cases are brought it is because of non-existence of state law or refusal of local courts to function. The proposed measure will not remedy this.

To require the Department of Justice to assume direction of the detection of violations would not only bring about a system of divided authority and responsibility, but would, in effect, work an innovation in the system of departmental organization. Why should prohibition be singled out as the only exception? What is needed is not further division of responsibility, but a closer co-ordination of the activities relating to prohibition enforcement within the Treasury Department so that responsibility may be fixed.

A boy had been brought into court for the sixth time on a charge of stealing chickens, and the magistrate, seeing the father present anxiously awaiting the result, thought he would appeal to him on the boy's behalf.

"This boy of yours," he said, sternly, "has been charged so many times that I'm absolutely tired of seeing him here."

"Ain't as tired of seein' 'im 'ere, sir, as what I am," was the reply.

"Then why don't you teach him better?" said the magistrate. "If you show him the right way he won't be coming here."

"I have showed him the right way," was the reply, "but the young fool's got no brains. He always gets caught."

"Why you call my boy a poor nut?" queried an indignant mother, who confronted the dietitian of a New Jersey charities association the other morning at her office door. And the latter has not yet found a way of convincing Mrs. Casuso that "poor nut" on the face of Angelo's card stands for poor nutrition.—Survey.

AUTOMOBILES—DUTY AS TO LIGHTS

GIMINSKI v. IRVING

206 N. Y. S. 119

Supreme Court, October 1, 1924

Failure to display lights on car colliding with plaintiff's vehicle more than hour after sundown made out prima facie case of negligence, and plaintiff was entitled to have jury so instructed.

PER CURIAM. The refusal of the trial court to charge that "failure to have a light on the defendant's car establishes a prima facie case of negligence" was error. *Martin v. Herzog*, 228 N. Y. 164, 126 N. E. 814. In the main charge the court said:

"The mere fact that there wasn't any light on that motor vehicle does not necessarily make the defendant guilty of negligence, but it is an element to be taken into consideration as to whether or not he was guilty of negligence; it is only negligent provided that it was the proximate cause of the accident. If the fact that the motor vehicle did not have a light on it was the cause of the accident, then you can say that the failure to have a light on the automobile was negligence."

The learned court, of course, had in mind actionable negligence as distinguished from abstract negligence. As far as it went, the charge was correct. But there was here, just as there was in the *Herzog* case, undisputed evidence of a collision with an unseen and unlighted vehicle, occurring more than an hour after sundown. That "is evidence from which a causal connection may be inferred between the collision and the lack of signals." *Martin v. Herzog*, supra, page 170 (126 N. E. 816). Thus there was a prima facie case of negligence made out, sufficient in itself to sustain a verdict, unless its probative force was overcome by evidence offered on behalf of defendant. The requested charge was directed to that point, which, in our opinion, was not covered in the main charge. The weight which the jury was bound to give to the violation of the statute was not made clear.

The judgment and order should be reversed on the law, and a new trial granted, with costs to the appellant to abide the event.

NOTE—Duty of Motorist as to Lights on Automobile at Night.—It has been held to be negligence per se to operate an automobile on a public highway at night without the lights thereon required by statute. If such negli-

gence contributes to cause an injury to another traveler who is in the exercise of due care, the owner or operator of the automobile is liable therefor in damages. *Hutchinson v. Miller & Lux*, Cal. App., 212 Pac. 394; *Ocilla v. Luke*, 28 Ga. App. 234, 110 S. E. 757; *Sheppard v. Johnson*, 11 Ga. App. 280, 75 S. E. 348; *Fairchild v. Kilbourne*, 152 Minn. 457, 189 N. W. 126; *Thomas v. Stevenson*, 146 Minn. 272, 178 N. W. 1021.

The failure to have two headlights, as required by law, if it so contributed to a collision that the same would not have taken place but for such failure, precluded recovery by the plaintiff for injuries due to the collision. *Martin v. Carruthers*, 69 Colo. 464, 195 Pac. 105.

It has been held that one seeking to recover for injuries received at night in a collision between the motorcycle with a side car, which he was operating, and another vehicle, could not recover unless he showed that his motorcycle was equipped with two lamps, as required by statute. *Willie v. Luczka*, 193 App. Div. 826, 184 N. Y. Supp. 751.

It is also held that whether the driving of an automobile at night without sufficient lights is negligence, is usually a question for the jury. *Sweet v. Salt Lake City*, 43 Utah 306, 134 Pac. 1167, 8 N. C. C. A. 922.

A statute providing that automobiles shall exhibit lights between certain hours is intended for the safety of all those using the highways. The lights are not alone required to guide and benefit those approaching the automobile on the highway, but also for the direction and guidance of those in charge of the automobile. It is the duty of the motorist to keep a vigilant watch ahead for other vehicles as well as for pedestrians upon the highway, and the lights are required to enable him to see persons and vehicles in time to avoid them as well as for the protection of those occupying the automobile. *Fisher v. O'Brien*, 99 Kan. 621, 162 Pac. 317; *Giles v. Ternes*, 93 Kan. 140, 143 Pac. 491, 144 Pac. 1014. *Duffy v. Hickey*, 151 La. 274, 91 So. 733; *Jolman v. Alberta*, 192 Mich. 25, 158, N. W. 170; *Cohen v. Silverman*, Minn., 190 N. W. 795; *Lauson v. Fond du Lac*, 141 Wis. 57, 123 N. W. 629, 25 L. R. A. (N. S.) 40, 135 Am. St. Rep. 30.

If one is driving at night when his lights become suddenly extinguished, it is his duty to stop, and if he drives further without lights he violates a statute forbidding driving without lights at night. *Nelson v. State*, 27 Ga. App. 50, 107 S. E. 400.

A statute requiring the display of a red light at night on the rear of every automobile while in use on the highways, and providing that "no person shall allow a motor vehicle owned by him or under his control to be operated" in violation of the provisions of such statute, imposes the duty of seeing that such light is carried upon the owner when he is in control of his machine, either personally or by a servant. When the machine is under control of another, the duty as to displaying the light is upon him. *Luckie v. Diamond Coal Co.*, 41 Cal. App. 468, 183 Pac. 178.

ITEMS OF PROFESSIONAL INTEREST

RECOMMENDATIONS ADOPTED BY THE
JUDICIAL CONFERENCE OF SENIOR
CIRCUIT JUDGES HELD IN WASH-
INGTON, D. C., OCTOBER 1st,
2nd and 3rd, 1924

First—Additional Judges

The Conference renews its recommendation that provision be made for two new Circuit Judges in the Eighth Circuit, two new District Judges in the Southern District of New York, and one new District Judge in the Northern District of Georgia. The Conference further recommends that a new District Judge be provided in the Western District of New York, and a new District Judge in the District of Maryland.

Second—Prohibition Law Enforcement

The members of this Conference are of the opinion, based on their experience in respect to the prosecution of offenses under the Prohibition Law, that it would make much for effectiveness in enforcing that law if the Prohibition Unit could be bodily transferred to the Department of Justice, and all the appropriations for such enforcement be expended under the direction of the Attorney-General, that in this way the attempted prosecution of trivial, futile and unimportant cases, which now crowd the dockets through the ill-advised zeal and practical ignorance of prohibition agents, can be avoided, and only those cases taken up and pressed which will really deter the principal offenders, and in the preparation of which district attorneys will have a personal responsibility.

Third—Bankruptcy

The Conference recommends to Congress that the Bankruptcy Statute be so amended that all judgments, decrees, orders and proceedings in bankruptcy shall be reviewed by appeal only, and that to be speedily taken.

Fourth—Libraries for Federal Courts

Whereas, a consideration of the condition of the law libraries provided and imperatively required for the use of the United States Courts of Appeals has disclosed the fact that no law library worthy of the name has ever been provided for the use of the Circuit Court of Appeals of the Second Circuit, and none has ever been provided at Denver for the Circuit Court of Appeals of the Eighth Circuit where that court is required to hold a term annually, that many of the books in the libraries pro-

vided for the Circuit Courts of Appeals have become so old and dilapidated that they must be repaired and rebound to keep them in use, and the purchase of the later volumes of sets of reports furnished and later text books is necessary to continue the usefulness of such reports and to perfect these libraries.

Whereas, This condition of the libraries compels the judges to postpone decisions and opinions until law books necessary to assure correct conclusions can be borrowed and read, and hampers and delays the administration of justice in the Federal Courts.

Resolved, That this Judicial Conference earnestly recommends to the President of the United States, the Attorney-General, the Director of the Budget, and the Congress of the United States:

1. That the sum of \$2,500 be annually and specifically appropriated and paid to each of the clerks of each of the Circuit Courts of Appeals to be expended by him as directed by the presiding judge of his court, to repair old books, purchase new ones and to maintain and increase every library, and that because there are two libraries of equal size, one at St. Paul and one at St. Louis in the Eighth Circuit, \$5,000 be appropriated and paid annually to the clerk of the Court of Appeals of that Circuit to maintain and increase those libraries.

2. That \$15,000 be appropriated and paid to the clerk of the Circuit Court of Appeals of the Second Circuit to be expended as directed by the presiding judge of that Circuit to purchase books, pamphlets, etc., and to establish a law library for that court in New York City.

3. That \$8,000 be appropriated and paid to the clerk of the Circuit Court of Appeals of the Eighth Circuit to be expended as directed by the presiding judge of that Circuit to purchase the proper books and establish a law library for that court at Denver.

BANKRUPTCY RULES

GENERAL ORDER V.

To be amended by adding at the end thereof, the following:

"Petitioners in involuntary bankruptcy proceedings whose claims rest upon assignment or transfer from some other person shall annex to one of the petitions filed all instruments of assignment or transfer and an affidavit stating the consideration paid for the assignment of such claims and alleging that the affiant is the legal and beneficial owner thereof and they were not purchased for the purpose of instituting bankruptcy proceedings based upon them."

GENERAL ORDER XIII.

To be amended by inserting the following paragraph as Section 1:

"1. No receiver, or his attorney, shall solicit any proof of debt, power of attorney, or other authority to act for, or represent, any creditor for any purpose in connection with the administration of the estate in bankruptcy, or the acceptance or rejection of any composition offered by a bankrupt."

NEW GENERAL ORDER

"Appointment of Receivers"

"A receiver or marshal appointed by the court, pursuant to the provisions of the Bankruptcy Act, to take possession of the assets of a bankrupt prior to the appointment or election of a trustee shall be deemed to be a mere custodian within the meaning of Section 48 of the Act, unless his duties and compensation are specifically extended by order of court upon proper cause shown."

NEW GENERAL ORDER

"Waiver of Dividends, Fees, or Compensation in Composition Cases"

"Before entering an order confirming a composition, the court shall require all persons who may have waived dividends or fees to compensation to set forth in writing and under oath all agreements with respect thereto, whether with the bankrupt, his attorney, or any other person whomsoever, and there shall also be required an affidavit by the bankrupt that he has not directly or indirectly paid or promised any consideration to any attorney, trustee, receiver, creditor or other person in connection with the composition proceedings except as set forth in such affidavit or in the offer of composition."

NEW GENERAL ORDER

"All attorneys, accountants, auctioneers, appraisers, receivers and trustees, requesting allowances from bankrupt estates for services rendered, shall file with the referee a petition under oath setting forth an itemized statement of the services so rendered and the amount claimed therefor. The statement shall also show the partial allowances, if any, already made. Such petition shall be heard and determined and allowances made thereon at the final meeting. The referee shall send to the trustee, creditors and every known person in interest a written or printed notice at least ten days before said meeting is held, stating the time and place thereof and the allowances sought by the various petitioners. Partial allowances but only for actual outlay in the

discharge of the services rendered may be made by the court before such final meeting."

NEW GENERAL ORDER

"Denial of Compensation to Attorneys in Certain Classes of Cases"

"The court shall have the power to deny the allowance of any fee to the attorney for petitioning creditors, or the reimbursement of advances, whenever it shall appear that said proceedings were instituted in connivance or in collusion with the bankrupt, or that said proceedings were not instituted in good faith."

NEW GENERAL ORDER

"In any district in which there is a city having at the last federal census, a population of 500,000 or more, no attorney for a receiver or a trustee shall be appointed except upon the order of the court. Such order shall be gained only upon the petition of the receiver or the trustee setting forth the name of the counsel whom he wishes to employ, the reasons for the selection of that person, and showing the necessity of employing any attorney or counsel. There shall be submitted with the petition an affidavit of the person recommended, showing that he is not employed by, and is not connected with, the bankrupt or any interests adverse to the receivers or the creditors."

NEW GENERAL ORDER

"In any application for an allowance of fees by an attorney, trustee or receiver, there shall be presented an affidavit by the person so applying that no agreement has been made directly or indirectly and that no understanding exists for a division of fees between the receiver or trustee and his attorney. And a similar affidavit shall be presented by the other party. In the absence of such affidavit no allowance whatever shall be ordered. Any one, whether receiver or trustee, or the attorney for either, who enters into such an agreement for a division of fees or has an understanding that such a division will be made shall be disqualified thereafter from again being appointed as a receiver or a trustee in bankruptcy or as an attorney for such receiver or trustee and an order to that effect shall be entered of record."

"Very well," said the attorney for the plaintiff, "we will waive the question for the present."

"Oh, come," replied the gentleman who was managing the defense, "why not make it a permanent waiver?"—Chicago Herald and Examiner.

DIGEST

Digest of Important Opinions of the State Courts of Last Resort and of the Federal Courts.

Copy of Opinion in any case referred to in this Digest may be procured by sending 25 cents to us or to the West Pub. Co., St. Paul, Minn.

Alabama	4, 13, 18
Arkansas	23, 28, 44
California	64
Delaware	16, 25
Georgia	9, 10, 41, 57
Idaho	19, 66
Indiana	38, 56
Iowa	8, 51, 62
Kentucky	15, 20, 30, 31, 45, 46, 47
Louisiana	24, 29, 32, 33, 49
Maine	40, 53, 70
Maryland	26, 34, 58
Michigan	11, 36, 63, 67
Mississippi	2, 52, 59, 69
New Jersey	22, 35, 68
New Mexico	1
New York	12, 21, 27, 39, 43, 61
Oklahoma	7, 60, 65
Oregon	3, 14
Texas	37, 43
U. S. C. A.	50
U. S. D. C.	42, 54
U. S. S. C.	5, 6, 17
Utah	55

1. **Animals—Furnishing "Feed."**—Pasturing is not furnishing "feed" within meaning of Laws 1917, c. 65, § 20, giving lien to persons who furnish feed for stock.—*El Paso Cattle Loan Co. of El Paso, Tex., v. Hunt, N. M., 228 Pac. 888.*

2. **Liability for Damages.**—Where animals separately owned unite in committing an injury, each owner is responsible only for the damage done by his animal, and, in a case wherein one only of such owners issued, he can be held liable for nominal damages only in the absence of such evidence that will enable the jury to determine the amount of the damage that was inflicted by his animal.—*King v. Ruth, Miss., 101 So. 500.*

3. **Bailment—Lien on Chattel.**—Claim of lien for labor and materials expended on chattel is not void because of non-liable items therein, where items are separately stated in notice, so that non-liable ones may be rejected on inspection thereof.—*Burns v. La Fontaine, Ore., 229 Pac. 369.*

4. **Bankruptcy—Misappropriation of Goods.**—Under agreement between owner and consignee of goods for sale on commission, securities and debts and all collections thereon held owner's property, conversion of which by consignee was misappropriation in fiduciary capacity within Bankruptcy Act, July 1, 1898, § 17, subd. 4, and, if willful, a willful and malicious injury to property, within subdivision 2 (Comp. St. § 9601), and not discharged.—*South Atlantic Guano Co. v. Childs, Ala., 101 So. 445.*

5. **Rules of Evidence.**—The general rules governing admissibility of evidence and competency and compellability of witnesses are applicable to examination of bankrupt and wife, under Bankruptcy Act, July 1, 1898, § 21a, as amended by Act Feb. 5, 1903, § 17 (Comp. St. § 9605).—*McCarthy v. Arndstein, U. S. S. C., 45 Sup. Ct. 16.*

6. **Self-Incrimination.**—Constitutional privilege against self-incrimination does not relieve bankrupt from duty of surrendering books and papers as part of his estate, under Bankruptcy Act July 1, 1898, § 70a (1), being Comp. St. § 9654.—*McCarthy v. Arndstein, U. S. S. C., 45 Sup. Ct. 16.*

7. **Banks and Banking—Note by Officers.**—A note signed by the officers, to obtain a loan for a bank, constitutes a legal obligation of the bank, where the money was received by it, and all parties understood the nature of the transaction.—*Leonard v. State Exchange Bank of Elk City, 236 Fed. 316, 149 C. C. A. 448.—First Nat. Bank of*

Skiatook v. Liberty Nat. Bank of Tulsa, Okla., 229 Pac. 258.

8. **Preference in Payment of Claims.**—Code Supp. 1913, § 3825a, declaring preference in favor of claims of state, county or other municipal corporations, against insolvent banks, is merely declaratory of common law and within legislative authority.—*In re Marathon Sav. Bank, Iowa, 290 N. W. 199.*

9. **Presenting Check.**—The payee of a check may recover against a bank in which he deposited it for collection, for negligent failure of the bank to present it for payment to the bank upon which it was drawn and in which the maker had on deposit sufficient funds to pay it. Civil Code 2910, § 2362; *Baillie v. Augusta Savings Bank, 95 Ga. 277, 21 S. E. 717, 61 Am. St. Rep. 74.* Where, in case of bankruptcy of the drawee bank, a composition is made with its creditors, whereby the payee of the check receives out of its assets a part payment of the indebtedness represented by the dishonored check, or accepts a new note, which does not amount to a novation or to an accord and satisfaction of the indebtedness, such part payment or new note does not constitute a satisfaction of his right to recover against the bank for a negligent failure to collect the check.—*Georgia Nat. Bank v. Fry, Ga., 124 S. E. 542.*

10. **Bills and Notes—Conditional Subscription.**—Knowledge by a bank cashier that a certain corporation, which is being promoted in the community, is taking subscriptions to its capital stock, upon condition that the subscribers thereto shall not become liable upon their subscriptions until a certain amount of stock is subscribed, and until the debts of another corporation which it is to absorb are paid, is not such a circumstance as will charge the cashier with notice that a promissory note, in the hands of a person who is known to him as the agent of the corporation to solicit stock subscriptions, was in fact given for such conditional subscription to the capital stock of the corporation, although the proceeds of the note were, at the instance of the agent who presented it for discount at the bank, credited to the account of the corporation, where the note was made payable to the maker and by him indorsed in blank, and where the note was an ordinary promissory note, which did not indicate on its face that it was given for corporate stock, or that its becoming a binding obligation was conditional.—*Exchange Bank of Springfield v. Beckwith, Ga., 124 S. E. 542.*

11. **Carriers of Passengers—Passenger While Transferring.**—One boarding street car, obtaining transfer, and leaving car at usual place of transfer, is "passenger" while on car, while making transfer, or while waiting to transfer, and after he is seated in car to which he has transferred.—*Moffitt v. Grand Rapids Ry. Co., Mich., 200 N. W. 274.*

12. **Constitutional Law—Compensation for Closing Street.**—Laws 1916, c. 576, amending section 12, of Grade Crossing Act, providing for compensating abutting owners between point where street is closed and next intersection, held not invalid, as impairing obligation of contract, under Const. U. S. art. 1, § 10, or as denying equal protection of laws, or depriving railroads of property without due process of law, under Const. U. S. Amend. 14, and Const. N. Y. art. 1, § 6.—*In re Grade Crossing Com'rs, N. Y., 206 N. Y. S. 103.*

13. **Election Contest.**—Alleged invalidity of constitutional amendment under which election was held is not proper ground of contest.—*City of Florence v. State, Ala., 101 So. 462.*

14. **License Fees.**—Or, Laws, § 8652, as amended by Laws 1912, c. 126, § 4, imposing license fees of \$100 per annum on itinerant drug vendors, held valid, and not in conflict with Const. U. S. Amend. 14, § 1.—*State v. McFall, Ore., 229 Pac. 79.*

15. **Contracts—Agreement of Officer.**—Contract of sheriff with one aiding him in his election to make latter deputy, if elected, is not in violation of law or contrary to good morals.—*Mullikin v. Miles, Ky., 264 S. W. 1086.*

16. **Corporations—Dissolution.**—Where a corporation paid \$8.50 per share for preferred stock and \$5.00 for common stock in another corpora-

tion, thereby becoming a large, though not controlling, stockholder, and will receive \$4.50 on its preferred and nothing on its common stock by dissolution of the corporation, mere fact that it voted for dissolution because it desired itself to dissolve, held not to indicate fraud.—*Robinson v. Pittsburgh Oil Refining Corporation*, Del., 128 Atl. 46.

17.—**Franchise Fee.**—Franchise fee imposed on foreign corporation doing interstate business under Gen. Code Ohio, § 8723-11, as amended by Act May 14, 1921 (109 Ohio Laws, p. 277), based on charge of certain amount on non-par value common stock representing corporation's property and business outside of state, as well as shares represented by property and business within state, held void as burden on interstate commerce.—*Air-Way Electric Appliance Corporation v. Day*, U. S. S. C., 45 Sup. Ct. 12.

18.—**Pledge of Stock.**—Where bank surrendered corporate stock which it had held as collateral to debtor under agreement that he would use it to raise funds with which to pay portion of debt, and where debtor improperly surrendered such stock to another bank to be held as collateral, and received from it in exchange trust receipts covering cotton which had been sold and proceeds dissipated, held bank originally holding such stock was entitled to recover same on paying value of trust receipt surrendered by second bank in acquiring such stock.—*Capital Nat. Bank v. Fourth Nat. Bank*, Ala., 101 So. 424.

19.—**Recovery of Payment for Stock.**—Where money is paid to a promoter for shares of stock in a contemplated corporation and the promoter fails to organize the corporation and abandons the enterprise, the subscriber may recover back the money paid to the promoter, even though the money has been applied in payment of the preliminary expenses of the organization of the proposed corporation, unless it is shown that the subscriber has consented to or acquiesced in the application of the money.—*Mackey v. Page*, Idaho, 229 Pac. 400.

20.—**Sale of Stock.**—Where price of corporate stock was agreed upon, and date of payment fixed, and stock was in deliverable state, and nothing remained to be done by seller except to receive purchase money and deliver certificate, held that contract became executed, and seller was entitled to recover price though buyer refused to accept stock.—*Lam v. White*, Ky., 264 S. W. 1113.

21.—**Subscription to Stock.**—Subscriber or stockholder, who has made subscription or acquired stock relying on fraudulent representations by corporation's agents, may, even against corporation's receiver, assert fraud and obtain relief based thereon, if he acts promptly after discovering fraud.—*Stone v. Young*, N. Y., 206 N. Y. S. 95.

22.—**Deeds—Obligation to Pay Royalty.**—Plaintiff's assignor agreed with defendant to assign certain patent license privileges and convey a factory plant and machinery in consideration of a stated sum in cash, the reservation of a royalty to plaintiff, and the reservation of an additional royalty to plaintiff's assignor. Held that on a proper construction of the written contracts of the parties including the deed, the additional royalty was not merged in the conveyance, but remained in full force after the deed was delivered.—*Jackson v. United Ry. Signal Co.*, N. J., 126 Atl. 296.

23.—**Descent and Distribution—Trees Are Realty.**—Growing trees on homestead of one deceased are realty, and his heirs at law, are necessary parties to valid conveyance thereof.—*Reeves v. Reeves*, Ark., 264 S. W. 979.

24.—**Divorce—Cruelty.**—Where husband made ample provision for wife, his refusal to give her monthly allowance, and his insistence that she state purpose of expenditure and render him statements thereof, held not cruelty entitling her to separation from bed and board, under Civ. Code, art. 135.—*Ducros v. Ducros*, La., 101 So. 407.

25.—**Easements—Intent.**—Where deed conveyed lot "with the use and privilege of a two feet wide alley," without limitation or restriction on grantee's use of alley, it was proper to consider language of grant in connection with purpose

easement was to serve and intent of parties at time of grant as it appeared from surrounding circumstances in determining extent of easement.—*Metts v. O'Connell*, Del., 126 Atl. 278.

26.—**Right of Way.**—Right of way acquired by grant cannot be lost by mere non-user for however long a time, unless such non-user is accompanied by some act indicating clearly and unequivocally an intention of the grantee to abandon it.—*Knotts v. Summit Park Co.*, Md., 126 Atl. 280.

27.—**Executors and Administrators—Authority of Executor.**—In absence of specific or implied authorization by will, executor and trustee may not invest personal estate in realty, and construction of building is considered as investment in realty.—*In re Schummers' Will*, N. Y., 206 N. Y. S. 112.

28.—**Fixtures—Machinery on Land.**—Mortgagors of rice lands or makers of trust deeds thereto, by provision that such deeds shall include "machinery now or hereafter put upon said premises for the conduct hereof, whether attached or detached," cannot vest title or lien, in trustees or beneficiaries in deeds, to pumping engines subsequently purchased and installed on the property, but to which sellers have retained title.—*Hachmeister v. Power Mfg. Co.*, Ark., 264 S. W. 976.

29.—**Forgery—Judge's Recommendation.**—Under Const. 1921, art. 5, § 10, providing for pardons on recommendations in writing of presiding judge of court before which conviction was had, and others, such recommendation in writing by judge is "public record or document" such as can be subject of forgery within Rev. St. § 833.—*State v. Rosborough*, La., 101 So. 413.

30.—**Frauds, Statute of—Oral Agreement.**—Oral agreement between widow having life estate and two sons, remaindermen, who had divided land, on execution of oil lease, to divide royalties equally between them was not within statute of frauds, either as transfer of land or as contract not to be performed within year.—*Meredith v. Meredith*, Ky., 264 S. W. 1109.

31.—**Homicide—Defense Against Robbery.**—Right to kill in defending against robbery does not end as soon as there is such change of possession of property as will render crime technically complete, but remains with owner as long as his property is in his immediate presence, and killing of robber will prevent it from being carried away.—*Flynn v. Commonwealth*, Ky., 264 S. W. 1111.

32.—**Husband and Wife—Community Property.**—Civ. Code, art. 2402, making land acquired during marriage "by purchase or in any other similar way" a part of community, held applicable to land conveyed to husband during marriage, in return for capital stock belonging to husband, since transaction, if not strictly sale, is transfer in "similar way," within statute.—*Succession of Watkins*, La., 101 So. 395.

33.—**Injunction—Extension of Time.**—Where purchaser of timber was entitled to extension of time for its removal by payment of annual sum after expiration of time originally provided for, no definite date being fixed for such payment, and did not make such payment on demand, seller could thereafter enjoin removal, in view of Civ. Code, arts. 1907, 2023, 2033, providing that party may perform condition for which a contract fixes no time at any time before being put in default by demand.—*Smith v. Baucum*, La., 101 So. 394.

34.—**Insurance—Adjuster's Authority.**—Acts of insurance adjuster in having damaged insured car taken to garage, securing estimates for cost of repairs, and having car transferred to another garage for repairs, held to warrant inference that in awarding contract for repairs he was acting for insurance company.—*Council v. Sun Ins. Office* of London, Md., 126 Atl. 229.

35.—**Authority of Assistant Superintendent.**—H., owner and operator of a jitney bus, obtained from the G. C. Co. a policy of liability and indemnity insurance, indemnifying him to the amount of \$10,000 against loss arising from claims for bodily injuries accidentally suffered, including death resulting therefrom. The bus was overturned by negligent operation and 26 persons were injured and one killed. E., assistant superintendent

ent of the claims department, was sent to adjust claims. The G. C. Co. paid out \$5,000. Three claims for injuries and the death claim remained unsettled. H. paid \$3,000, in settlement of the three claims for injuries. Suit was instituted on the death claim, and judgment for \$15,000 recovered. Pending an appeal of this judgment, settlement was made for \$9,000. The G. C. Co. contributed \$5,000 toward the settlement so that it had paid out \$10,000 under its policy. The policy provided that the total liability for loss from any one accident was \$10,000; and that no change or waiver of the terms and conditions of the policy should be valid, unless set forth in an indorsement signed by the president or secretary of the company. In an action against the G. C. Co. by H. to recover the \$4,000, counsel fee and costs, expended by him in effecting settlement of the death claim, based upon an agreement alleged to have been made by the G. C. Co. through E., held that the trial judge erred in not granting a non-suit upon the ground that E. had no authority under the terms of the policy, or otherwise, under the evidence submitted, to make the agreement upon which the action was instituted.—*Horne v. Georgia Casualty Co.*, N. J., 126 Atl. 289.

36.—Cancellation.—Policy cannot be canceled for alleged fraudulent statements never made nor authorized by insured, whose agent did not seek out insurer's agent, but who was sought and urged to insure by latter, and who neither made nor authorized written application for insurance.—*Patrons' Mut. Fire Ins. Co. of Michigan v. Perl, Mich.*, 200 N. W. 286.

37.—Employer's Liability.—Where general terms of policy included all employees engaged in operation of electric light plants, including drivers, extension of lines, maintenance and installation, operation of waterworks and pumping station, etc., and insured city against loss under Compensation Law from bodily injuries by employees while on duty, notwithstanding provision that it should not apply to injuries resulting from ownership or maintenance of automobile or motorcycle, held that, where meter reader used his own motorcycle in performance of duties, and was allowed monthly sum therefor by city, injury to him when so using it was within policy.—*Employers' Indemnity Corporation v. Felter, Tex.*, 264 S. W. 137.

38.—Extended Insurance.—*Burns' Ann. St.* 1914, § 4622a, cl. 10, providing for reduction of amount or term of extended insurance in ratio of any unpaid premium note or other existing indebtedness, to net value of such extended insurance, does not authorize deduction of existing indebtedness from cash value in computing term of extension under policy entitling insured to extended insurance for face amount "less any indebtedness hereon or secured hereby."—*Waddell v. New England Mut. Life Ins. Co., Ind.*, 144 N. E. 852.

39.—Industrial Policy.—Where industrial policy provided insurer might make payment to any person equitably entitled thereto for funeral expenses, held though indefiniteness as to beneficiary is not against public policy, insurer, in determining who is "equitably entitled" to payment, must be governed by equitable principles approximating those recognized by courts.—*Zornow v. Prudential Ins. Co., N. Y.*, 206 N. Y. S. 92.

40.—Intemperance.—"Immoral act," in benefit association by-law denying benefits for sickness or injury, "caused by intemperance or immoral act of the claimant," or after effects of such causes, held not to include intemperance or after effects thereof.—*Croteau v. Lunn & Sweet Employees' Ass'n, Me.*, 126 Atl. 284.

41.—Removal From Building.—Where a fire insurance policy covers certain personality "only while contained in" a described building, a suit on the policy cannot be maintained by the insured against the insurer for a fire loss of the property when situated in another building to which it had been moved by the insured without the consent of the insurer as evidenced by the terms of the policy or an indorsement thereon.—*Wise v. Royal Ins. Co., Ltd., Ga.*, 124 S. E. 556.

42.—Storage of Automobiles.—Covenant of insurance policy on machines of automobile dealer, that insured should report each automo-

ble owned by it for sale and its storage location, held in view of clause of policy as to exclusions from risk, not violated by its temporary storage, for purpose of making a sale, at a place other than that reported.—*Bank of South Jacksonville v. Hartford Fire Ins. Co., U. S. D. C., 1 Fed. (2d) 43.*

43.—Intoxicating Liquors.—Evidence.—In prosecution for manufacture of liquor, defendant's failure to prove that whisky could not have been manufactured from mash found in defendant's possession did not create presumption against him, where the mash was in the state's possession and nature and character thereof were available to state.—*Fitts v. State, Tex.*, 264 S. W. 1006.

44.—Evidence of Sale.—In prosecution for selling liquor, testimony as to sale of liquor by defendant's wife and son at his home, near time of alleged sale, held relevant as tending to prove that defendant, as head of house, kept and was engaged in business of selling liquor therein.—*Melton v. State, Ark.*, 264 S. W. 965.

45.—Possession of Still.—One who does not own or exercise any dominion over still, but merely sells to another supplies for its construction and operation, is not in possession of still and is not accomplice of one who owns and exercises exclusive control over still.—*Commonwealth v. Lee, Ky.*, 264 S. W. 1112.

46.—Search Warrant.—Affidavit that affiant "has personally seen persons coming therefrom (the place to be searched) today in different states of intoxication," couched in printed language contained in stereotyped form of affidavit, held insufficient to warrant issuance of search warrant, in view of Const. § 10.—*Vick v. Commonwealth, Ky.*, 264 S. W. 1079.

47.—"Unlawful Possession."—Manual act of handling bottle of intoxicating liquor while taking a drink does not of itself constitute unlawful possession, where one so holding does not claim ownership or control.—*Skidmore v. Commonwealth, Ky.*, 264 S. W. 1053.

48.—Landlord and Tenant—Renewal of Lease.—Though, as against his lessor, lessee of business place had no legal right to renewal of lease, as against all others he had reasonable expectancy of renewal, which law regards as valuable property right.—*Steinberg v. Steinberg, N. Y.*, 206 N. Y. S. 134.

49.—Libel and Slander—Newspapers.—Privileged character of defendant newspaper's report of report by commissioner to municipal council in matter of public interest, published by defendant in good faith and without actual malice, was not destroyed by subsequent discovery that report of commissioner was incorrect in whole or in part.—*Leininger v. New Orleans Item Pub. Co., La.*, 102 So. 411.

50.—Limitation of Actions—Acknowledgment of Debt.—Letters written by the maker of notes, which had been barred by limitation for many years, to the payee, in which he acknowledged an indebtedness not specified, and stated his intention to pay "some" of the debt voluntarily as soon as he got enough ahead to do so, held insufficient to revive cause of action, at least when it was not shown that he had "enough ahead."—*Rahilly v. O'Laughlin, U. S. C. C. A., 1 Fed. (2d) 1.*

51.—"New Promise."—Blank check signed by maker of note barred by limitations held not written admission of debt or new promise to pay it, within Code, § 3456, so as to remove bar; parol evidence being inadmissible to show that it referred to indebtedness evidenced by note.—*Henne-man v. Taber, Iowa*, 200 N. W. 218.

52.—Master and Servant—Employment of Police Officers.—Where persons, natural or artificial, with the consent of the state, employ police officers to represent them in protecting and preserving their property and maintaining order on their premises, and such officers are engaged in the furtherance of their duties acting within the scope of their powers, they become and are the servants of such private persons and corporations, and for any negligent or wanton acts committed by them in the line of their duties to the injury of others their employers are liable.—*Walters v. Stonewall Cotton Mills, Miss.*, 101 So. 495.

53.—"Incidental" to Business.—Where employer, in assenting to provisions of Workmen's Compensation Act, recited that his business was that of "lumber and those incidental" at "Portage, Maine, and vicinity," lumberman injured 30 miles away, while hauling logs which would later be floated to the mill, held employed in business "incidental" to that of sawing lumber, and within "vicinity" of mill at Portage, so that his injury was compensable.—*Durand's Case*, Me., 126 Atl. 164.

54.—Minimum Wage Law Unconstitutional.—The Wisconsin Minimum Wage Law is unconstitutional, so far as it applies to adult women.—*Folding Furniture Works v. Industrial Commission*, U. S. D. C., 300 Fed. 991.

55.—Notice of Injury.—Where employer's foreman knew of accident when it occurred and did not consider it sufficiently serious to require report, and employee's failure to give notice was without intent to mislead or prejudice employer, case was not within Comp. Laws 1917, § 3156x, as added by Laws 1921, c. 67, § 1, authorizing reduction of award by 15 per cent.—*Hartford Accident & Indemnity Co. v. Industrial Com'n, Utah*, 228 Pac. 753.

56.—Quarrel Between Employees.—Where disagreement or quarrel between co-employees arises out of the work in which they are then engaged, and as a result one assaults and injures the other, it will be inferred that the injury arose out of the employment.—*Furst Kerber Cut Stone Co. v. Mayo, Ind.*, 144 N. E. 857.

57. Mechanics' Liens.—Evidence.—The plaintiff having alleged in his petition that the contract was completed on August 27, 1920 (which allegation was not stricken by amendment), and it appearing from the evidence that the contract sued on was a running account under which the last item furnished was on said date, it was error prejudicial to the defendant for the court, over proper objection, to admit in evidence testimony of the plaintiff to the effect that the suit was instituted within 12 months from the time it was due, and that he did not consider an account past due until after the first of January.—*McCluskey v. Still, Ga.*, 124 S. E. 548.

58. Mortgages.—Sale.—Requirement of decree, under Laws 1898, c. 123, §§ 720-723, that mortgage sale shall be advertised "at least 3 weeks," means 3 clear weeks, and day of first publication and day of sale must both be excluded.—*Owens v. Graetzel, Md.*, 126 Atl. 224.

59. Municipal Corporations.—Closing Street.—Owners of property abutting on certain street, from and by which they have adequate access to their property, which access is not destroyed by closing of another street intersecting first street and ending at such property, cannot complain of closing of such other street.—*City of Jackson v. Welch, Miss.*, 101 So. 361.

60.—Engineering Fees.—A reasonable charge for engineering, which includes making plans and specifications, surveying, inspecting the materials going into the pavement, superintending the construction, etc., constitutes a proper item to be included in computing and assessing the whole cost of the improvements, even though the engineer is employed by the city at a salary, and the amount is to be paid into the city treasury, under ordinance. The city having the right to reimburse itself for all expenses it may incur, 5 per cent fixed by ordinance for such service being found fair and reasonable, and there being no finding that this amount would more than reasonably cover the cost of such work to the city in the instant district, the intention to include such amount in the assessment does not warrant an injunction.—*City of Tulsa v. Weston, Okla.*, 229 Pac. 108.

61. Principal and Agent.—Clandestine Lease.—Salesmen, who clandestinely secured lease of employer's place of business for their own benefit, must assign it to employer, since it was their duty to aid employer in his endeavor to continue to carry on his business.—*Steinberg v. Steinberg, N. Y.*, 206 N. Y. S. 134.

62. Railroads.—Negligence.—In absence of rule requiring head brakeman to ride in cab of engine or any other particular place in train, it was not negligence to place carload of poles in such position that head brakeman on top of seventh or eighth car, for purpose of transmitting signals, would have to travel over it in reaching locomotive cab where it was his custom to ride.—*Jackson v. Hanrahan, Iowa*, 200 N. W. 202.

63. Sales.—Fraudulent Statements.—Alleged fraudulent statements by agent of party to contract containing express warranties cannot be relied on as defense to action for balance due, as constituting implied, as distinguished from express, warranties.—*Murphy v. Gifford, Mich.*, 200 N. W. 263.

64.—Performance of Contract.—Contract for sale of wiping rags to be imported by seller, parties thereto knowing nothing of imported wiping rags, except from one shipment which filled description, held not performed by delivery of shoddy or roofing rags.—*Rosenberg v. Geo. A. Moore & Co., Cal.*, 229 Pac. 34.

65.—Warranty.—Where plaintiff sells a tractor to defendant and takes notes and mortgage for purchase price, and warrants it "to be well made and of good material, and with proper use capable of doing as good work as any other machine of the same kind, and rated capacity working under like conditions," and the enforcement of this warranty, conditioned upon notice directed to the home office and delivery of machine to the place where received, these conditions may be waived by the conduct of the seller, and the same is a question of fact for the jury under proper instructions of the court.—*Advance-Rumely Thresher Co. v. Yancy, Okla.*, 229 Pac. 149.

66. Statutes.—Title.—Where the title states, as one of the purposes of the act, "to relieve the state from the cost of holding examinations for admission to the bar," but the body of the act makes no provision for such relief, the title to that extent is delusive and misleading.—*Jackson v. Gallet, Idaho*, 228 Pac. 1068.

67. Taxation.—Public Purpose.—City ordinance, creating pension system for civil employees, held not violative of Const. art. 8, § 25, prohibiting taxes except for "public purposes."—*Bowler v. Nagel, Mich.*, 200 N. W. 258.

68. Wills.—Undue Influence.—The mere fact that the chief beneficiary was a mistress of the testator, and possessed considerable influence over him, does not raise the presumption that she exercised such influence in the making of his will.—*In re Gaddis' Will, N. J.*, 126 Atl. 237.

69. Work and Labor.—Implied Promise.—Where the averments of a bill are to the effect that love and affection existed between an uncle and niece, and that the uncle, when sick, was brought to the house of the niece at his request, and that she nursed and cared for him during his illness because of the relationship, no implied promise of remuneration for her services for nursing him arises; the presumption being, because of this relationship, that the services were rendered gratuitously.—*Smythe v. Sanders, Miss.*, 101 So. 435.

70. Workmen's Compensation.—Test of Dependency.—Test of father's dependency on deceased son is whether latter's contributions were necessary and relied on by father for his means of living, in view of his station in life, and whether they were more than offset by support rendered by him to son, mere reception of assistance being insufficient.—*Henry's Case, Me.*, 126 Atl. 236.